

Message Text

CONFIDENTIAL

PAGE 01 STATE 242418

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C O N F I D E N T I A L STATE 242418

E.O. 11652: GDS

TAGS: ENRG, PFOR, EC

SUBJECT: GULF DISPUTE

REF: QUITO 7004

1. THE FOLLOWING CHANGES IN THE TEXT OF THE DRAFT BY THE
GOE OF THE GOE LETTER OF ASSURANCE SET OUT IN REFTEL ARE
PROPOSED BY GULF:

A. FIRST PARAGRAPH: AFTER ,1973" ADD "MODIFICADO POR EL
ACTA SUSCRITA EL 14 DE JUNIO DE 1974,"

B. FIRST PARAGRAPH: AFTER "INMUEBLES, ADD "Y OBLIGACIONES
QUE"

C. FOURTH PARAGRAPH: AFTER "NETAS" ADD "E INVENTARIOS
HECHOS"

D. FOURTH PARAGRAPH: AFTER "INVERSIONES" ADD "E
INVENTARIOS,

E. FIFTH PARAGRAPH: AFTER "GULF" ADD "DICHA PARTE SERIA
ESTABLECIDA EN LA FECHA EFECTIVA DE LA TRANSFERENCIA DE
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PAGE 02 STATE 242418

ACUERDO CON LA AUDITORIA INDEPENDIENTE DE LOS REGISTROS

DE CONTABILIDAD QUE LA GULF HA MANTENIDO EN CONFORMIDAD
CON LAS LEYES DEL ECUADOR."

F. SIXTH PARAGRAPH: AS A FINAL SENTENCE, ADD --
"LOS PLAZOS Y DEMAS CONDICIONES SEGUN SEAN CONVENIDAS
CON LA GULF."

G. EIGHTH PARAGRAPH: SUBSTITUTE FOLLOWING --

"SI HUBIESE DIFERENCIAS NO RESUELTAS POR LO DISPUESTO EN
LOS PARRAFOS ANTERIORES NOS. 4, 5 Y 7, EL GOBIERNO O LA
GULF PODRA HACER NOTIFICACION DE LA DIFERENCIA Y
NOMBRAR EL EXPERTO DESIGNADO POR LA PARTE NOTIFICANTE
PARA RESOLVER LA DIFERENCIA. AL RECIBIR EL NOTIFICADO
DICHA NOTIFICACION RESPONDERA DENTRO DE DIEZ DIAS
PARTICIPANDO EL NOMBRE DEL EXPERTO QUE DESIGNA PARA
DICHO FIN. LOS DOS EXPERTOS PROCEDERAN INMEDIATAMENTE
A EXAMINAR Y RESOLVEREL CASO Y EN CASO QUE NO RESUELVAN
LA DIFERENCIA DENTRO DE TREINTA DIAS CONTADOS DESDE LA
SEGUNDA NOTIFICACION PROCEDERAN A DESIGNAR EL TERCER
EXPERTO PARA RESOLVER DEFINITIVAMENTE. EN CASO QUE LOS
DOS EXPERTOS NO PUDIEREN PONERSE DE ACUERDO SOBRE LA
DESIGNACION DEL TERCERO, DENTRO DE CINCUENTA DIAS,
CONTADOS DESDE LA SEGUNDA NOTIFICACION, EL GOBIERNO O
LA GULF PODRA PEDIR QUE (EL PRESIDENTE DE LA CORTE
INTERNACIONAL DE JUSTICIA O EL PRESIDENTE DEL BANCO
INTERAMERICANO DE DESARROLLO) NOMBRARE EL TERCER EXPERTO
Y DICHO NOMBRAMIENTO AL SER ACEPTADO POR EL NOMBRADO
SERA FINAL. LOS EXPERTOS CONSIDERARAN Y DECIDIRAN TODAS
LAS CUESTIONES DE HECHO Y DERECHO PRESENTADOS POR EL
NOTIFICANTE Y EL NOTIFICADO. EL LAUDO DE LOS EXPERTOS
O LA MAYORIA DE ELLOS, SEGUN EL CASO, SERA DETERMINANTE
Y FINAL. LAS LEYES DEL ECUADOR VIGENTES EL 30 DE
SEPTIEMBRE 1976 REGIRAN TODO ASUNTO CITADO O RELACIONADO
CON LA PRESENTE CARTA. NI LA GULF NI EL GOBIERNO PODRA
PRESENTAR RECLAMACIONES DISTINTAS DE AQUELLAS QUE SEAN
DETERMINADAS DE ACUERDO CON LO DISPUESTO EN LA PRESENTE
CARTA O QUE SEAN INCORPORADAS EN DOCUMENTOS SUSCRITOS
CONFORME A LO DISPUESTO EN LA MISMA O EN DOCUMENTOS DE
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CONFIDENTIAL

PAGE 03 STATE 242418

IMPLEMENTACION."

2. REASONS FOR GULF'S CHANGES IN GOE DRAFT FOLLOW:

PARAGRAPH 1

GULF'S PARTICIPATION IS NO LONGER SOLELY DETERMINED BY THE

CONTRACT OF 6 AUGUST 1973 BECAUSE 25 PERCENT WAS SOLD TO
CEPE VIA ACTA SIGNED ON 14 JUNE 1974. THE CONTRACT OF

6 AUGUST 1973 CONTAINS OBLIGATIONS WHICH THE BUYER MUST
ASSUME.

PARAGRAPH 4

THE PROPERTIES NOW SUBJECT TO SALE INCLUDE INVENTORIES OF
CRUDE OIL, PRODUCTS, EQUIPMENT, MATERIALS AND SUPPLIES
AS WELL AS AMORTIZABLE INVESTMENTS. MOST OF THE INVEST-
MENT MADE BY TEXACO AND GULF IN ECUADOR WAS MADE UNDER
THE CONCESSION CONTRACTS OF 1964 AND 1966, AS MODIFIED BY
THE SPECIAL AGREEMENT (TO BUILD THE PIPELINE AND
RELINQUISH ACREAGE) OF 1969, THUS IMPROPER TO LIMIT THE
SCOPE TO INVESTMENTS MADE SINCE AUGUST 1973.

PARAGRAPH 5

THE PIPELINE INVESTMENT HAS NOT BEEN AUDITED, THUS THE
INVESTMENT MAY NOW PROPERLY BE SUBJECT TO AUDIT; HOWEVER,
THE OBLIGATION TO PURCHASE SHOULD NOT BE CONTINGENT UPON
THE RESULTS OF THE AUDIT. WE SUGGEST AUDIT PROCEDURE
FOR PIPELINE BE SAME AS FOR OTHER PROPERTIES.

PARAGRAPH 6

WE THINK THAT PERIODS FOR PAYMENT AND OTHER RELATED
CONDITIONS SHOULD BE MUTUALLY ACCEPTABLE.

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PAGE 04 STATE 242418

PARAGRAPH 8

THIS PARAGRAPH IS INTENDED TO ACCOMPLISH THESE ESSENTIALS:
TO PROVIDE A MECHANISM FOR REASONABLE SETTLEMENT OF ALL
DIFFERENCES; TO ESTABLISH THE APPLICABLE LAW AND TO
REQUIRE THE PARTIES TO BRING ALL CLAIMS INTO THIS
TRANSACTION FOR THEIR FINAL DISPOSITION.

3. SUGGEST AMBASSADOR ENDEAVOR TO SEE POVEDA TONIGHT AND
PRESS UPON HIM IMPORTANCE OF GOE ACCEPTING THE ARBITRATION
CLAUSE PROPOSED BY GULF. IN SO DOING, AMBASSADOR MAY WISH
TO DRAW ON FOLLOWING ARGUMENTS:

(A) THE CLAUSE PROPOSED BY GULF IS COMPATIBLE WITH WHAT

WE UNDERSTAND TO BE ECUADOR'S JURISPRUDENCE, FOR IT SPECIFIES THAT THE LAW TO BE APPLIED IN ANY ARBITRATION WILL BE THE LAW OF ECUADOR. UNLIKE SOME ARBITRATION CLAUSES, ACCORDINGLY, THIS CLAUSE NEGATES ANY INFERENCE

THAT A LAW OTHER THAN THAT OF ECUADOR APPLIES.

(B) MOREOVER, THE CLAUSE PROPOSED BY GULF DOES NOT PROPOSE A FOREIGN SITUS FOR ANY ARBITRATION THAT MAY TAKE PLACE.

(C) WHILE WE RECOGNIZE THAT TRADITIONALLY LATIN AMERICAN STATES HAVE NOT BEEN DISPOSED TO ENTRUST DIFFERENCES WITH FOREIGN COMPANIES TO ADJUDICATION WHICH IS NOT ENTIRELY DOMESTIC, IT IS IMPORTANT TO NOTE THAT THIS TRADITION HAS BEEN CHANGING OF LATE. E. G., VENEZUELA AGREED THAT CERTAIN CONTRACTUAL RELATIONSHIPS ARISING OUT OF ITS NATIONALIZATION OF THE OIL INDUSTRY MAY BE SUBMITTED TO THE ARBITRATION OF THE INTERNATIONAL CHAMBER OF COMMERCE IN PARIS, AND, JUST THIS WEEK, PERU HAS AGREED THAT ELEMENTS OF A CONTRACT WITH MARCONA ALSO WILL BE ARBITRATED BY THE INTERNATIONAL CHAMBER OF COMMERCE SHOULD THE NEED FOR ARBITRATION ARISE.

(D) THE NOTABLY INTERNATIONAL ELEMENT IN GULF'S PROPOSAL IS THAT, IF AND WHEN EXPERTS NAMED BY THE PARTIES SHOULD CONFIDENTIAL

CONFIDENTIAL

PAGE 05 STATE 242418

FAIL TO AGREE UPON A THIRD EXPERT, HE WOULD BE NAMED BY THE PRESIDENT OF THE INTERNATIONAL COURT OF JUSTICE OR THE PRESIDENT OF THE IADB. THERE IS MUCH PRECEDENT FOR SUCH A ROLE FOR THE ICJ PRESIDENT, BUT, IF THAT IS NOT ATTRACTIVE TO THE GOE, WE TRUST IT WOULD AGREE TO ENTRUSTING A DISTINGUISHED MEXICAN WHO IS PRESIDENT OF THE IADB WITH THE RESIDUAL AUTHORITY TO APPOINT SUCH AN ARBITRATOR. ROBINSON

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